

SECTION 16

Digests

The Ninth Circuit reversed the Board's holding that required employer, rather than claimant, to reimburse the state for any additional payments, stating that this holding contradicted the state provision providing that benefits shall be "repaid by the worker" if recovery is made under the maritime laws. The court rejected the Director's argument that Section 16 of the Act, which forbids compensation under the Act from being paid to creditors, precludes the Board from ordering either employer or claimant from repaying the state. The court concluded that the state is not a "creditor" within the meaning of Section 16, in that the state sought to recoup payments that were improperly paid, and its claim to reimbursement arose solely because claimant was found to be entitled to compensation under the Act. The court therefore modified the Board's order to require employer to pay claimant an amount equal to the state payments and to require claimant to pay that amount to the state. *E.P. Paup Co. v. Director, OWCP*, 999 F.2d 1341, 27 BRBS 41 (CRT)(9th Cir. 1993), *aff'g and modifying McDougall v. E.P. Paup Co.*, 21 BRBS 204 (1988).

The Eleventh Circuit held that claimant's assignment to a bank of insurance payments he received under an annuity awarded under the Act were valid and not barred by the anti-assignment clause under Section 16. The court noted that the payments received by claimant were not due and payable under the Act, but were payments made by a third-party insurance company. Therefore, the court asserted, the purpose of the anti-assignability provisions of Section 16 was served and no longer existed once the amount of the award was paid to claimant and once the annuity was purchased on claimant's behalf. *In Re Sloma*, 43 F.3d 637, ___ BRBS ___ (CRT) (11th Cir. 1995).

The Board holds that the administrative law judge properly rejected claimant's claim to recover interest paid by a bankruptcy court to employer on the amount of its lien against the proceeds of a third-party settlement that were part of the bankruptcy estate. Claimant's contention that the interest is "compensation," and therefore exempt from creditors' claims under Section 16 is without merit as none of the funds distributed was a present or future payment of compensation, and the lien was on a damages award under Section 33. *Hudson v. Puerto Rico Marine, Inc.*, 27 BRBS 183 (1993), *aff'd mem*, No. 93-3375 (11th Cir. Nov. 16, 1994).

The Board held that the plain language of Section 33(f) provides employer an offset against future compensation due in the amount of the entire third-party net recovery, notwithstanding the fact that an unrelated pre-existing judgment creditor attached a portion of the net recovery. As there was no direct attempt to attach claimant's benefits under the Act, the Board rejected claimant's contention that Section 16 is applicable in the instant case. Claimant's argument that allowing employer a full credit is an "indirect" or "de facto" lien in violation of Section 16 is without merit. *Hernandez v. National Steel & Shipbuilding Co.*, 32 BRBS 109 (1998).

The Ninth Circuit held that the later-enacted Social Security Act garnishment provision, 42 U.S.C. §659, impliedly repealed the Anti-Alienation provision of Section 16 of the Longshore Act because the two statutes are irreconcilable, the plain language and definitions of the garnishment provision suggest that it applies to the Longshore Act, and the legislative history of the garnishment provision explicitly states that benefits under the Longshore Act are subject to garnishment when the payments are made by the United States. Consequently, the Ninth Circuit affirmed the administrative law judge's determination that claimant's benefits, which are being paid by the Special Fund (which the court determines are paid by the United States), are properly being garnished pursuant to an Oregon court order to satisfy claimant's delinquent spousal support payments. *Moyle v. Director, OWCP*, 147 F.3d 1116, 32 BRBS 107(CRT) (9th Cir. 1998), *cert. denied*, 119 S.Ct. 1454 (1999).

